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IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10130 of 2007

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Kailash Mahto –II, Son of Rohan Mahto, resident of Village- Nanho Bigha, P.S. Akbarpur, District, Nawada

.... Petitioner

Versus

1. The Bihar State Electricity Board through it's Secretary Vidyut Bhawan, Patna
2. The Secretary, Vidyut Bhawan, Patna
3. The Chairman, Vidyut Bhawan, Patna
4. The Joint Secretary, Vidyut Bhawan, Patna
5. The General Manager-cum-Chief Engineer, Central Bihar Area Electricity Board, Patna
6. The Electrical Superintending Engineer, Gaya Electrical Circle, Gaya
7. The Electrical Executive Engineer, Electrical Supply Division, Nawada
8. The Assistant Engineer, Electric Supply Division, Nawada

.... Respondents

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with

Civil Writ Jurisdiction Case No.12055 of 2007

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Kuleshwar Yadav, son of late Budhai Yadav, resident of Village- Nanhu Bigha, P.S. Akbarpur, District- Nawada

.... Petitioner

Versus

1. The Bihar State Electricity Board through it's Secretary Vidyut Bhawan, Patna
2. The Secretary, Bihar State Electricity Board, Vidyut Bhawan, Patna
3. The Chairman, Bihar State Electricity Board, Vidyut Bhawan, Patna
4. The Joint Secretary, Bihar State Electricity Board, Vidyut Bhawan, Patna
5. The General Manager-cum-Chief Engineer, Central Bihar Area Electricity Board, Patna
6. The Electrical Superintending Engineer, Gaya Electrical Circle, Gaya
7. The Electrical Executive Engineer, Electrical Supply Division, Nawada
8. The Assistant Engineer, Electric Supply Division, Nawada

.... Respondents

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with

Civil Writ Jurisdiction Case No.10778 of 2007

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1. Amirak Yadav, Son of Late Lachchu Yadav, Resident of Village- Nanhu Bigha, P.S.- Akbarpur, District- Nawada
2. Sudamiya Devi, Wife of Late Lachchu Yadav, Resident of Village- Nanhu Bigha, P.S.- Akbarpur, District- Nawada

.... Petitioners

Versus

1. The Bihar State Electricity Board through it's Chairman, Vidyut Bhawan, Patna
2. The Secretary, Vidyut Bhawan, Patna
3. The Chairman, Vidyut Bhawan, Patna
4. The Joint Secretary, Vidyut Bhawan, Patna
5. The General Manager-Cum-Chief Engineer, Central Bihar Area Electricity Board, Patna
6. The Electrical Superintending Engineer, Gaya Electrical Circle, Gaya
7. The Electrical Executive Engineer, Electrical Supply Division, Nawada
8. The Assistant Engineer, Electric Supply Division, Nawada

.... Respondents

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Appearance :

For the Petitioners : Mr. Shivendra Kishore, Sr. Advocate
Mr. Diwakar Kishore, Advocate

For the Respondents : M/s. Mr. Vinay Kirti Singh,
Vijay Kumar Verma,
Akhileshwar Singh, Advocates

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL ORDER

17 22-10-2014 In view of the identical issues involved in all the writ applications they have been heard and considered together and are being disposed of by a common order.

I have heard the parties and perused the records of these cases.

As stated above, the issues involved in all the writ applications are identical but there is a slight variation in the facts which is required to be narrated before proceeding to consider the issues involved.

All the petitioners are aggrieved by Annexure 1 of their respective writ applications by which they have been

dismissed from service w.e.f. 14.07.1998 in view of their conviction and sentence to undergo rigorous imprisonment for 5 years by the Apex Court in Criminal Appeal No.109 of 1989 whereas the appeal filed by the petitioners bearing Criminal Appeal No.407 of 1987 preferred against the conviction was dismissed upholding the conviction and sentence under Section 201 of the Indian Penal Code and sentence of 2 years imprisonment by the High Court.

The petitioner of C.W.J.C. No.10130 of 2007, namely, Kailash Mahto II, claims to have worked as skilled khalasi and, thereafter, also claims that he was given pay scale of selection grade by Annexure 2, whereas, petitioners of other two writ applications were working as unskilled khalasi. The petitioner Kailash Mahto II, claims that he had submitted a representation on 01.08.1998 seeking voluntary retirement w.e.f. 01.08.1998 due to family reason and since 01.09.1998 he was not attending the duty. Petitioner further claims that, as per his date of birth recorded in the service book, he was to retire on 30.11.1999 after attaining the age of superannuation of 60 years and a notice to that effect was issued vide Annexure 4 dated 22.12.1998. However, petitioner's request for voluntary retirement was accepted w.e.f. 01.08.1998 vide Annexure 5 dated 11.01.1999. However,

subsequently, vide Annexure 1 dated 20.01.2000 the aforesaid order was recalled and he was dismissed from service w.e.f. 14.07.1998 i.e., the date on which the Apex Court had passed the final order in criminal appeals. The petitioner has claimed that Annexure 1 has been passed even after his usual date of retirement on attaining the age of superannuation i.e., after 30.11.1999 and claims that such order ought not to have been passed after the date of retirement and acceptance of the resignation of voluntary retirement on 11.01.1999.

So far the petitioners of other writ applications are concerned, they claim that they also sent their resignations which were accepted but the resignations were later on allowed to be withdrawn on their request on the condition that they would not get the salary for the period during which they remained absent from the service. However, orders of their dismissal on the ground of their conviction, that stands appended as Annexure 1 in their respective writ applications, were passed on 22.10.1999 in case of petitioner of C.W.J.C. No.10778 of 2007 and on 25.10.1999 in the case of the petitioner of C.W.J.C. No.12055 of 2007.

All the issues raised in the writ applications are identical save and except that has been raised in C.W.J.C. No.10130 of 2007 claiming that the moment the request for

voluntary retirement was accepted on 11.01.1999, there was severance in the master servant relationship and, thus, the order as contained in Annexure 1, could not have been passed by the authority concerned and such order of dismissal could not have been passed after the date of his deemed retirement. In other cases, the writ petitioners themselves submitted resignation and, thereafter, withdrew it and, later on, after withdrawal of their resignation, the impugned orders were passed.

It is next contended on behalf of the petitioners that the order has been passed without following the procedure laid down in Clause 30 of the Standing Order of the Bihar State Electricity Board, Patna under the Industrial Employment (Standing Orders) Act, 1946. It is urged that some procedure was required to be followed before taking any disciplinary action against the workman other than a casual and since that has been followed and even no show cause notice was ever issued and, as such, no opportunity was given to the petitioners to defend the cases, the impugned orders apart from being violative of the statutory Standing Order, have also been passed in violation of the principle of natural justice. Thus, all of them are required to be quashed.

It has been stated in the writ petitions that the

petitioners, while working in the said department, were implicated in a criminal case in connection with Akbarpur Police Station for an offence under Sections 302,149,380,146 and 148 of the Indian Penal Code and Sections 3 and 5 of the Explosive Substance Act. All the writ petitioners were found guilty for offence under Section 326 read with Section 149 of the Indian Penal Code and were convicted and sentenced to undergo rigorous imprisonment for a period of 8 years, whereas, they were also found guilty for the offence under Section 201 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for 2 years. The sentences, however, were ordered to run concurrently. The petitioners preferred criminal appeal no.43/82 before this Court which was partially allowed and respective conviction and sentence of the petitioners under Section 326/149 of the Indian Penal Code were set aside, however, the conviction of all the appellants under Section 201 of the Indian Penal Code and sentence awarded in that connection was affirmed vide order dated 24.09.1986 in the criminal appeal no.43/82. Against the aforesaid judgment dated 24.09.1986 passed in criminal appeal no.43/82, the petitioners preferred criminal appeal no.407/87 before the Apex Court, whereas, the informant of the concerned police case, namely, Lakhia Devi, preferred criminal appeal no.109/89 against

their acquittal from the charges under Section 326/149. Both the appeals were heard together and vide judgment dated 14.07.1998 (Annexure A to the counter affidavit filed on behalf of the respondents), the criminal appeal filed by the Lakhia Devi was allowed but the Apex Court set aside the judgment of acquittal passed by the Patna High Court with respect to all the accused who were convicted by the trial court under Section 326 read with Section 149 of the Indian Penal Code and conviction by the trial court was restored, however, in the facts and circumstances of the case the sentence was reduced from 8 years to 5 years and, as such, the appeal filed by the petitioners bearing criminal appeal no.407/87 was dismissed.

It is claimed that the petitioner, Kailash Mahto II, on 01.08.1998, had submitted representation in the office of the Assistant, Electrical Engineer, Nawada for seeking voluntary retirement w.e.f. 01.08.1998 itself which was forwarded to the Electrical Executive Engineer, Electric Supply Division, Nawada for necessary action. The Assistant Electrical Engineer, Nawada vide its letter no.1254 dated 28.11.1998 informed the Electrical Executive Engineer, Electric Supply Division, Nawada that the petitioner has sought voluntary retirement due to family reason w.e.f. 01.09.1998 and since then he is not attending the duty.

Petitioner has also submitted that his date of birth was recorded in the service book as 01.12.1939 and otherwise his retirement was due on 30.11.1999 after attaining the age of superannuation of 60 years and a notice to that effect was already given to him vide letter dated 22.12.1998 (Annexure 4). The aforesaid letter for seeking voluntary retirement was forwarded by the Electrical Superintending Engineer, Gaya as well as Electrical Executive Engineer, Gaya vide their respective letters dated 05.10.1998 and 05.12.1998 to the General Manager-cum-Chief Engineer, Central Bihar area Electricity Board, who accepted the request of voluntary retirement of the aforesaid petitioner w.e.f. 01.08.1998 and communicated the same to the concerned authority vide letter no.11.01.1999 (Annexure 5). However, from perusal of documents annexed along with the writ petitions, it appears that resignation letter submitted by the petitioner – Kailash Mahto II was accepted. The petitioner has not appended a copy of the concerned letter upon which the decision was taken. Learned counsel submits that after such acceptance of request for voluntary requirement/resignation w.e.f. 01.08.1998 or even otherwise after attaining the age of superannuation of the petitioner on 30.11.1999, the respondent Board could not have dismissed the petitioner from service vide Annexure 1 dated 20.01.2000 as there

was severance of master and servant relationship. The aforesaid petitioner has claimed that Annexure 1 was issued without cancelling the letter dated 11.01.1999 by which the request of the petitioner for seeking voluntary retirement w.e.f. 01.08.1998 has been accepted by the General Manager-cum-Chief Engineer. However, the order impugned discloses that, since such decision has been obtained by suppressing the relevant facts, such order accepting resignation w.e.f. 01.08.1998 was not acceptable. So far next issue is concerned, all the writ applications are on identical footing and it is claimed that the order has been passed without following the procedure laid down in Clause 30 of the Standing Order concerned as the order of dismissal has been passed in terms of Rule 29 B of the Standing Order. Rule 30 discloses procedure for disciplinary action against workman other than casual. With respect to major punishment, it envisages about five stages but it is claimed that no procedure has been followed.

It has been contended on behalf of the petitioners that, since the aforesaid procedure has not been followed, the impugned orders are fit to be quashed. That apart, it has been stated that even if it is assumed that such procedure was not required to be followed, neither any show cause notice was ever issued upon the petitioners nor the petitioners have been given any

opportunity to submit their counter view. Learned counsel has placed reliance upon a decision of a Single Bench of this Court rendered in **Brij Bihari Singh Vs. State of Bihar and Ors. [2005(4) PLJR 232]** holding that major punishment awarded without initiating departmental proceeding would be without jurisdiction and violative of principles of natural justice. Next issue raised by the petitioners is that the order impugned, as contained in Annexure 1 of all the writ applications, have been passed by the Joint Secretary of the Board even though he was higher in rank and was superior officer to the disciplinary authority of the petitioners who according to them was the General-Manger- cum-Chief Engineer of the Board who had accepted the request of the resignation of the petitioners. It is submitted that the appeal would lie against such order and in fact the General Manager-cum-Chief Engineer was the competent authority for taking the aforesaid action against the petitioners as the Joint Secretary who is higher in rank would be the appellate authority. It is contended that, in the aforesaid manner, the petitioners have been deprived from the opportunity of preferring the appeal before the appellate authority concerned as such authority itself has passed the impugned order. Learned counsel has placed reliance upon another decision of a Single Bench of

this Court in this connection rendered in **Prabhu Narayan Singh Vs. the State of Bihar & Ors. [2001(2) PLJR 292]**, laying down that punishment passed by an authority not being the appointing authority, the question of jurisdiction of the decision making authority goes to the root of the matter and the possibility of a delinquent suffering prejudice at the hands of a person who is not competent to take action is fit to be set aside. Learned counsel has placed reliance upon a decision of the High Court of Kerala dated 30.01.1989 passed in **O.P. No.5726/1985-R (T.C. Bose Vs. Kerala State Electricity Board) ILR 1989 (2) Kerala 324** holding that the impugned order having been passed without following the procedure laid down in Clause 16 or clause 24 read with Clause 26 of the Standing Order would amount to be a procedural irregularity. Even assuming that a serious misconduct is committed and there is no defence against the same, an employee may, nevertheless, successfully plead before the employer that he may not deserve the extreme penalty. The delinquent employee may, in some cases, successfully plead for reduction of the penalty due to extenuating or mitigating circumstances as also on account of compassionate considerations.

Per contra, learned counsel appearing for the respondents has submitted that the writ applications have been

filed after much delay, i.e., nearly 7 years after passing of the impugned orders contained in Annexure 1 and, thus, on the ground of delay and laches itself, the writ applications are fit to be dismissed.

It is next contended that there is no question of adherence of the principles of natural justice as the petitioners themselves had adopted the practice of fraud and suppressed all material facts as they never informed the employer regarding any criminal case initiated against them and conviction and final decision having been taken by the Apex Court upholding the conviction by the trial court and sentencing them to undergo rigorous imprisonment for 5 years. Learned counsel submits that fraud vitiates the very solemnity of all the proceeding and, thus, only thing which has been done by the authority is to rectify the order after the necessary information was received by the Board through the informant of the criminal case. Learned counsel has placed reliance upon a decision of the Supreme Court rendered in **Municipal Board, Pratabgarh and Another Versus Mahendra Singh Chawla and Others [(1982) 3 SCC 331]** holding that once there was conviction, the concerned Municipal Board erred in giving fresh appointment to a person who by abuse of his office had attempted to obtain illegal gratification. Learned counsel has

also placed reliance upon a recent decision of the Hon'ble Supreme Court rendered in **Devendra Kumar Versus State of Uttaranchal and others [(2013) 9 Supreme Court Cases 363]** holding that suppression of such material information regarding the conviction or pendency of criminal case itself amounts to moral turpitude and is a separate and distinct matter than what is involved in criminal case, thus, even in the case of acquittal or discharge, if the appointee had suppressed the fact of pendency of criminal case, the service of appointee concerned is liable to be terminated as the person who has obtained appointment by fraud and misrepresentation cannot be permitted to urge that their offence cannot be subjected to inquiry, trial or investigation.

It is admitted position that the Hon'ble Supreme Court allowed the appeal of the informant and dismissed the appeal of the petitioners vide judgment dated 14.07.1998, appended as Annexure A to the counter affidavit and, thereafter, the petitioners filed their respective conditional resignation letters. The petitioners of C.W.J.C. No.10778 of 2007 and C.W.J.C. No.12055 of 2007 sought withdrawal of their resignation letters which were allowed on certain conditions. The petitioner of C.W.J.C. No.10130 of 2007 had admittedly sought conditional resignation/voluntary retirement due to family reason and did not

work after 01.08.1998. The question would arise as to what had led him not to attend his duty from 01.08.1998. The answer lies in the judgment of the Apex Court itself that the petitioners were directed to surrender forthwith to serve out remaining part of their sentence. Petitioner of C.W.J.C. No.10130 of 2007, Kailash Mahto II, has clearly stated that the present writ application was being filed only after undergoing the sentence, thus, one can reach to safe conclusion that the petitioners deliberately suppressed the fact that they were convicted and sentenced and since they, as per the direction of the Apex Court, were required to serve the remaining part of sentence, they were not on duty but this fact was suppressed by them. They had submitted letters of resignation. Admittedly the petitioners were sentenced to undergo rigorous imprisonment for 5 years under Section 326 read with Section 149 of the Indian Penal Code and their conviction under Section 201 of the Indian Penal Code and sentence of 2 years also remained intact. Though the date of surrender has not been disclosed in the writ petitions, it has to understood that they surrendered on 01.08.1998, i.e., the date from which they sought acceptance of their respective resignation letters and stopped attending their duty. Even if they were in jail serving the sentence of 5 years that would have ended sometimes in the year 2003 and they could

have earlier filed their writ applications immediately thereafter but it took about another four years in filing of the present writ applications which has not been explained at all. They have not stated anywhere in the writ applications that factum of passing of the impugned order (Annexure 1) was not known to them till they came out of jail after serving the sentence. Even the dates of surrender have not been disclosed in the writ applications, thus, in my considered opinion, these writ applications suffer from the vice of unexplained delay and laches.

At the time of hearing of these cases, a question was put up to the learned counsel appearing for the petitioners as to whether at any point of time the factum of their involvement in a criminal case was disclosed to the employer or not. Learned counsel was not in a position to answer the aforesaid query. However, there is no averment to that extent in the counter affidavit also. At the same time, it does not appear from the pleadings that even after conviction by the trial court the factum of conviction and sentence was made known to the employer by the petitioners. Even after final judgment of the Apex Court, they suppressed the fact and tried to get their conditional resignation accepted which petitioner, Kailash Mahto II obtained but others petitioners withdrew it later. However, admittedly this fact was

never disclosed and they never attended the duty also and, thus, one can reach to a safe conclusion that there has been deliberate suppression of important material fact on part of the petitioners and they had obtained the earlier orders by playing fraud upon their employer. The Apex Court in **Devendra Kumar (Supra)** has held that suppression of such material information from the employer itself amounts to moral turpitude. In the aforesaid case appointment was obtained by playing fraud and misrepresentation, however, the Hon'ble Supreme Court has observed in clear terms that it is a settled proposition of law that where an applicant gets an office by misrepresenting the facts or by playing fraud upon the competent authority, such an order cannot be sustained in the eye of the law. "Fraud avoids all judicial acts, ecclesiastical or temporal." Their Lordships have quoted the observations made by the court in **Lazarus Estates Ltd. V. Beasley [(1956) 1 QB 702 : (1956) 2 WLR 502 : (1956) 1 All ER 341 (CA)**. The aforesaid observation is being reiterated for better appreciation:

> 13. It is a settled proposition of law that where an applicant gets an office by misrepresenting the facts or by playing fraud upon the competent authority, such an order cannot be sustained in the eye of the law. "Fraud avoids all judicial acts, ecclesiastical or temporal." (Vide S.P. Chengalvaraya Naidu V. Jagannath (1994) 1 SCC 1 : AIR 1994 SC 853.) In Lazarus Estates Ltd. V. Beasley [(1956) 1 QB 702 : (1956) 2 WLR 502 : (1956) 1 All ER 341 (CA) the Court observed without equivocation that: (QB p.712)
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> "…. No judgment of a court, no order of a

> Minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything."

The Apex Court has also scrutinized ratio laid down in various earlier cases dealing with fraudulent misrepresentation including one in **Shrisht Dhawan V. Shaw Bros. [(1992) 1 SCC 534** holding that fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct. Another decision which has been noticed by the Apex Court in the aforesaid decision is in **United India Insurance Co. Ltd. V. Rajendra Singh [(2000) 3 SCC 581]** observing that fraud and justice never dwell together (*fraus et jus nunquam cohabitant*). Thus, in my considered opinion, fraudulent persons cannot come and demand justice in view of the established maximum which has been noted by the Apex Court in the aforesaid decision that *Sublato fundamento cadit opus* i.e., the foundation being removed, the superstructure falls. The Apex Court has laid down in various cases that dishonesty should not be permitted to bear the fruit and benefit those persons who have frauded resorted themselves to commit fraud and misrepresentation. In such circumstances, the court should not perpetuate the fraud by entertaining petitions on their behalf. The relevant passage from the **Devendra Kumar (Supra)** is reproduced as under:

> "18. The ratio laid down by this Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit those persons who have frauded or misrepresented themselves. In such circumstances the court should not perpetuate the fraud by entertaining petitions on their behalf. In Union of India v. M. Bhaskaran 1995 Supp (4) SCC 100: 1996 SCC (L&S)162 : (1996) 32 ATC 94: AIR 1996 SC 686 this Court, after placing reliance upon and approving its earlier judgment in Vizinagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi (1990) 3 SCC 655 : 1990 SCC (L&S) 520: (1990) 14 ATC 766, observed as under: (M. Bhaskaran case 1995 Supp (4) SCC 100: 1996 SCC (L&S)162 : (1996)32 ATC 94: AIR 1996 SC 686, SCC P.104, Para6)
>
> If by committing fraud any employment is obtained, the same cannot be permitted to be countenanced by a court of law as the employment secured by fraud renders it voidable at the option of the employer."

In the present case also, it is admitted position that the appellants have suppressed material information from the employer regarding their involvement in a criminal case of moral turpitude and even their conviction and final rejection of their claim by the Apex Court. They absented themselves from duty but never disclosed that they were required to do so in view of their surrender for serving out the remaining part of the sentence. So far the decision of the Kerala High Court in **T.C. Bose (supra)** is concerned in that case factum of involvement of criminal case was all along known to the employer and the petitioner was suspended from service in view of pending enquiry into the allegation of criminal misappropriation, however, in the case in hand there is admitted fraud and misrepresentation by the

petitioners and suppression of pending of criminal case and conviction. Thus, the aforesaid decision would not help the petitioners. In the present case, in my considered opinion, they are not in a position to successfully plead for reduction of the penalty due to extenuating or mitigating circumstances or on account of compassionate considerations which was the issues considered by the High Court of Kerala in the aforesaid decision.

Thus, in my considered opinion, the order of voluntary retirement/acceptance of conditional resignation letter, since was obtained by playing fraud and suppressing material information which would itself amount to moral turpitude, has to be declared non est in law, as it is well settled as has been held in the **Devendra Kumar (Supra)** by the Apex Court that in **A.P. State Financial Corpn. [V. GAR Re- Rolling Mills [(1994) 2 SCC 647] and State of Maharashtra V. Prabhu [(1994) 2 SCC 481]** that the writ court, while exercising its equitable jurisdiction, should not act to prevent perpetration of a legal fraud as courts are obliged to do justice by promotion of good faith. The relevant sentence of the aforesaid case is quoted as under:

> "14. In A.P. State Financial Corpn. V. GAR Re-Rolling Mills [(1994) 2 SCC 647] and State of Maharashtra V. Prabhu [(1994) 2 SCC 481] this Court has observed that a writ court, while exercising its equitable jurisdiction, should not act to prevent perpetration of a legal fraud as courts are obliged to do justice by promotion of good faith. "Equity is, also known to prevent the law from the

> crafty evasions and subtleties invented to evade law."

Equity is, also, known to prevent the law from the crafty evasions and subtleties invented to evade law. Thus, the petitioners cannot play fraud/misrepresentation to the employer to obtain the benefit and at the same time approach this Court with a complain that such order should not have been overturned subsequently and order of dismissal could not have been passed without granting opportunity of hearing. Thus, in my considered opinion, it is not a fit case in which the discretionary powers of this Court flowing from Article 226 of the Constitution of India should be exercised in favour of the petitioners.

Since I have already held that all the writ petitions suffer from the vice of delay and laches and also that these are not the fit cases in which this Court should exercise its discretionary power under Article 226 of the Constitution of India, other issues are not required to be gone into.

As a result, these writ applications fail and are, accordingly, dismissed.

(Dr. Ravi Ranjan, J)

Sanjay-II/- N.A.F.R.

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